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No. 03-1388

In The

Supreme Court of the United States

DOUGLAS SPECTOR, ET AL.,
Petitioners,

v.

NORWEGIAN CRUISE LINE LTD.,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICI CURIAE* PARALYZED VETERANS OF AMERICA, AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, UNITED SPINAL ASSOCIATION, GOODWILL INDUSTRIES INTERNATIONAL, INC., NATIONAL MULTIPLE SCLEROSIS SOCIETY, THE ARC OF THE UNITED STATES, AND UNITED CEREBRAL PALSY IN SUPPORT OF CERTIORARI

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BRIEF OF *AMICI CURIAE* PARALYZED VETERANS OF AMERICA, AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, UNITED SPINAL ASSOCIATION, GOODWILL INDUSTRIES INTERNATIONAL, INC., NATIONAL MULTIPLE SCLEROSIS SOCIETY, THE ARC OF THE UNITED STATES, AND UNITED CEREBRAL PALSY IN SUPPORT OF CERTIORARI

The Paralyzed Veterans of America ("PVA"), the American Occupational Therapy Association ("AOTA"), the United Spinal Association, Goodwill Industries International, Inc. ("Goodwill"), the National Multiple Sclerosis Society, The Arc of the United States ("The Arc"), and United Cerebral Palsy ("UCP") respectfully submit this *amici curiae* brief in support of certiorari.[1]

INTEREST OF *AMICI*

Founded in 1946, the Paralyzed Veterans of America is a congressionally chartered veterans service organization with over 20,000 members, all of whom are veterans of the armed forces with spinal cord injury or dysfunction. PVA has developed a unique expertise on a wide variety of issues involving the special needs of its members and uses that expertise to be the leading advocate for civil rights and opportunities which maximize the independence of our members. Virtually all PVA members use wheelchairs for mobility and have a significant interest in the broadest possible implementation and enforcement of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq*. PVA's Advo-

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[1] The parties in this case have consented to the filing of this brief. Their letters are on file with the Clerk of this Court. Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party has authored this brief in whole or in part, and no person or entity other than *amici* and their counsel contributed monetarily to the preparation or submission of this brief.

cacy and Architecture Programs advocate for full access to the built environment, including marine vessels of all types. PVA receives complaints from its members and others who suffer discrimination because they cannot gain access to cruise ships or because they do not have access to the full range of services and amenities available to others onboard.

The American Occupational Therapy Association is the national professional association of over 40,000 occupational therapists and occupational therapy assistants as well as students of the profession. The AOTA mission is to support the contributions of occupational therapy to health, wellbeing, productivity and quality of life. Occupational therapists provide treatment and intervention for people with physical and mental disabilities to promote full participation in society and maximum achievement of human potential. Occupational therapy can assist individuals with disabilities in identifying work limitations and potential. AOTA advocates on behalf of the profession and the public through support of positive public policy such as that contained in the ADA and disability income support programs.

The United Spinal Association is a membership organization of persons with spinal cord dysfunction, injury, or disease, many of whom are persons with disabilities as defined by the ADA. The United Spinal Association furthers its members' interests by assuring quality healthcare, promoting research, advocating for civil rights and independence, and educating the public about these issues and enlisting their help to achieve these fundamental goals. The United Spinal Association has expanded its original mission of advocacy as a veterans' organization and now provides its expertise to all individuals with a spinal cord injury or disease, regardless of their age, gender, or veteran status. The United Spinal Association has direct experience with travel services available to individuals with mobility impairments. Particularly, the United Spinal Association advocates on behalf of travelers with disabilities who have confronted barriers during their

trips and is just beginning to offer travel services to its members.

Goodwill Industries International, Inc. is a network of community-based, autonomous member organizations serving people with workplace disadvantages and disabilities by providing job training and employment services, as well as job placement opportunities and post-employment support. With locations in the United States, Canada, and twenty-three other countries, Goodwill helps people overcome barriers to employment and become independent, tax-paying members of their communities. Through its membership network, it seeks to enhance the quality and dignity of life for individuals, families, and communities on a global basis, through the power of work, by eliminating barriers to opportunity for people with special needs, and by facilitating empowerment, self-help, and service through dedicated, autonomous local organizations. Goodwill weeks to ensure that every person in the global community has the opportunity to achieve his or her fullest potential as an individual and to participate and contribute fully in all aspects of a productive life.

The National Multiple Sclerosis Society is a not-for-profit organization serving people with multiple sclerosis ("MS") in every state. Founded in 1946, the Society supports more MS research and serves more people with MS than any national voluntary MS organization in the world. Through a nationwide network of chapters, the National MS Society supports research efforts, educates, provides a variety of empowering programs, organizes fund-raising events, and advocates for people with disabilities.

The Arc of the United States, through its approximately 900 state and local chapters, is the largest national voluntary organization in the United States devoted solely to the welfare of the more than seven million children and adults with mental retardation and related developmental disabilities and their families. Since its inception, The Arc has vigorously challenged attitudes and public policy, based on false

stereotypes, that have authorized or encouraged segregation of people with mental retardation and related disabilities in virtually all areas of life. The Arc was one of the leaders in framing and supporting passage of the ADA. The Arc is now actively involved in the law's implementation and enforcement.

For more than 55 years, United Cerebral Palsy has been committed to change and progress for persons with disabilities. The national organization and its nationwide network of 99 affiliates in 36 states, and the District of Columbia, strive to ensure the inclusion of persons with disabilities in every facet of society — from the Web to the workplace, from the classroom to the community. As one of the largest health charities in America, UCP's mission is to advance the independence, productivity, and full citizenship of people with disabilities through an affiliate network.

SUMMARY OF ARGUMENT

Amici file this brief in support of certiorari in this case because of the important question it presents regarding the applicability of the ADA to cruise ships. For many people with disabilities, taking a cruise is an ideal vacation option because cruise ships offer, in a relatively small space, an incredible array of leisure activities. Cruise ships frequently contain restaurants, bars, movie theaters, shopping outlets, casinos, sunbathing decks, swimming pools, live music and theater, educational programs, health spas, and gymnasiums. Thus a traveler with a disability, who may have limited mobility, need not leave the ship to enjoy a host of entertainment options. She need only unpack once over the course of her vacation, and if she requires rest in the middle of the day, her cabin is close at hand. A recent survey commissioned by the Travel Industry Association of America and two other groups found that people with disabilities are fifty percent more

likely to have taken a cruise in the past five years than the population at large.

The decision of the Court of Appeals in this case, however, if left to stand, would give cruise lines license to ignore accessibility requirements mandated by the ADA. When Congress passed the ADA, it deliberately crafted the public accommodations provisions to reach broadly and to cover entities like cruise ships. Congress did not only seek to guarantee access to the bare necessities of life like grocery stores and hospitals; rather, Congress decided to include cultural outlets that make life more fulfilling, such as theaters, museums, health spas, and amusement parks. Allowing cruise ships to avoid the public accommodations provisions of the ADA would subvert Congress' stated goal of permitting people with disabilities to participate fully in society. Moreover, there is no principled reason for exempting cruise ships from the ADA. Given the demonstrated feasibility of making cruise ships accessible, and in light of the fact that many cruise lines have made their ships accessible and actively recruit passengers with disabilities, any concern about asking the industry to do the impossible is misplaced. This Court should therefore grant the writ, set the case down for briefing and argument, and reverse the judgment below.

ARGUMENT

I. EXEMPTING CRUISE SHIPS FROM TITLE III OF THE ADA WOULD SUBVERT CONGRESS' GOAL OF FULL PARTICIPATION IN SOCIETY BY PEOPLE WITH DISABILITIES.

A. The Plain Text of the ADA and Its Legislative History Evidence Congress' Goal of "Full Participation."

When it passed the ADA in 1990, Congress recognized "the continuing existence of unfair and unnecessary

discrimination" against people with disabilities. 42 U.S.C. § 12101(a)(9). Congress sought to remedy this invidious discrimination through the public accommodations provisions of Title III, which was designed to assure "full participation" by people with disabilities in American society. *Id.* § 12101(a)(8). As the House Committee on Public Works and Transportation noted in its final report, "[t]he [ADA] will permit the United States to take a long-delayed but very necessary step to welcome individuals with disabilities *fully* into the mainstream of American society." H.R. Rep. No. 101-485(I) (1990), at 24 (emphasis added); *see also* H.R. Rep. No. 101-485(III), at 22 ("The purpose of the [ADA] is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life.").

To achieve this goal of full participation, Congress made the public accommodations provisions of the ADA broad in scope; the sweep of ADA coverage reaches more entities and services than any of Congress' earlier civil rights statutes.[2] Notably, the Act does not limit its coverage to only those businesses and services that a person with a disability would need in order to meet the day-to-day requirements of contemporary life. Rather, the provisions cover almost all aspects of public life and human interactivity. In addition to requiring accessibility for more basic needs (e.g., grocery

[2] *See* Ruth Colker, *ADA Title III: A Fragile Compromise*, 21 BERKELEY J. EMP. & LAB. L. 377, 385-87 (2001) (comparing scope of Title III to the narrower public accommodations provisions of the Civil Rights Act of 1964); Robert L. Burgdorf Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 470-73, 493-501 (1991) (noting that Title III covers, "with a few exceptions such as the sale or rental of housing, almost every facet of American life in which a business establishment or other entity serves or comes into contact with members of the general public").

stores and hospitals), Title III expressly includes concert halls, galleries, museums, health spas, amusement parks, or any "other place of recreation" in order to ensure that people with disabilities have access to cultural outlets that make life joyous, not just possible. *See* 42 U.S.C. § 12181(7). That Congress opted to explicitly include these signifiers of a fully-lived life is unsurprising in light of its finding that "persons with disabilities . . . have less social and community life, participate much less often in social activities that other Americans regularly enjoy, and express less satisfaction with life." H.R. Rep. No. 101-485(III), at 25 (citing Louis Harris & Assocs., *The ICD Survey of Disabled Americans: Bringing Disabled Americans Into the Mainstream* (1986)). Thus in passing the ADA, Congress sought to help people with disabilities realize one of their greatest dreams — to live an unconstrained life that includes everything society has to offer.[3]

B. "Full Participation" Includes Equality of Access on Cruise Ships

Cruise ships have long held a special place in the American cultural psyche, and their rich history has been well documented and fictionalized in print, film, and television.

[3] As testimony before Congress repeatedly emphasized, attainment of the "American dream" for people with disabilities was a primary goal of the ADA. *See, e.g.*, S. Rep. No. 101-116, at 20 (1989) (citing testimony that the ADA would permit people with disabilities to "have the same aspirations and dreams as other American citizens" and "know that their dreams can be fulfilled," and that America is true to its ideal of equality, which is "the full measure of the American dream"); *id.* at 96 (additional views of Sen. Hatch) ("Persons with disabilities, no less than other Americans, are entitled to an equal opportunity to participate in the American dream. It is time for that dream to become a reality."); 136 Cong. Rec. S9684 (July 13, 1990) (statement of Sen. McCain) ("Mr. President, this bill is an important step in making the American dream available to all . . . . The freedom to pursue the American dream is at the heart of what makes our Nation great.").

See, e.g., Kurt Ulrich, MONARCHS OF THE SEA (1999, St. Martin's Press); TITANIC (Paramount Studios, 1997); Frederick Emmons, AMERICAN PASSENGER SHIPS: THE OCEAN LINES AND LINERS, 1873-1983 (1985, Univ. of Del. Press); THE LOVE BOAT (1977-1986, ABC Television). As the recent media coverage of the maiden voyage of the *Queen Mary 2* attests, cruise ships continue to operate as a cultural signifier of the good life. *See* Melissa Grace, Ralph Ortega, and Jose Martinez, *Bow to the Queen: New Yorkers Stand at Attention as QM2 Ends 1st Voyage Here*, N.Y. DAILY NEWS, Apr. 23, 2004, at 2; James Barron, *A Queen Arrives, and Even in Jaded New York, Jaws Drop*, N.Y. TIMES, Apr. 23, 2004, at B2. Statistics bear this out: A recent study sponsored by the cruise industry found that 68 million Americans — almost one-quarter of the country's population — have indicated a desire to take a cruise. *See* International Council of Cruise Lines ("ICCL"), *Cruise Industry FAQs*, *available at* http://www.iccl.org/faq/cruising.cfm (last visited on June 25, 2004) (describing a cruise as "everyone's dream vacation").

The continued public appeal of cruise ships has fueled unparalleled growth in the industry. Tens of millions of people have taken a cruise in the past two decades, *id.*, and despite a general economic downturn in the rest of the tourist industry post–9-11, the cruise industry has "continued its record growth," it has "maintain[ed] its historically high occupancy rate," and it "continue[s] to expand its contribution to economic activity in the United States." ICCL, *2002 Economic Summary*, *available at* http://www.iccl.org/resources/2002EconomicStudySummary.pdf (last visited on June 25, 2004). It is not difficult to locate the source of the cruise industry's popular success. Besides occupying a unique place in our collective consciousness, "a cruise offers all the things most people want in a vacation — romance, excitement, relaxation, adventure, escape, discovery, luxury, value and more." ICCL, *Cruise Industry FAQs*, *supra*.

It is practically stating the obvious to note that "full participation" in society includes the ability to enjoy these celebrated aspects of human existence. Philosophers have observed for centuries that "being able to laugh, to play, to enjoy recreational activities" are central to the attainment of a fully-lived life. Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 POL. THEORY 202, 222 (1992).[4] As noted above, Congress recognized just how important these activities are when it included leisure-focused entities such as health spas, museums, and amusement parks in the list of public accommodations covered by Title III. *See* 42 U.S.C. § 12181(7). As the Eleventh Circuit observed in *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000), cruise ships are essentially floating public leisure and recreation centers. "Cruise ships, in fact, often contain places of lodging, restaurants, bars, theaters, auditoriums, retail stores, gift ships [sic], gymnasiums, and health spas." *Id.* at 1241. Therefore, to exempt cruise ships from the requirements of Title III, especially in light of the remarkable position they occupy in American culture, is to seriously undermine Congress' goal of full participation by people with disabilities in all aspects of American life. *Cf. PGA Tour, Inc. v. Martin*, 532 U.S. 661, 677 (2001) (explaining that Title III "should be construed liberally" to further congressionally mandated goals, and finding that a professional golf competition is therefore a "public accommodation" under the ADA).[5]

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[4] *Quoted in* Ann Hubbard, *Meaningful Lives and Major Life Activities*, 55 ALA. L. REV. 997, 1015 (2004).

[5] As Petitioners explain on page 13 of their Petition for a Writ of Certiorari, no cruise ships serving United States mainland ports currently fly the American flag. Thus, while this case technically concerns only application of Title III to foreign-flagged cruise ships, the practical effect of any ruling of this Court will be to determine whether *any* cruise ship must comply with the mandate of Title III.

II. COMPLIANCE WITH TITLE III OF THE ADA WOULD NOT ADVERSELY AFFECT THE CRUISE SHIP INDUSTRY.

A. The Final Report of the Passenger Vessel Access Advisory Committee Provides Workable Standards for the Cruise Ship Industry's Compliance with Title III.

The ADA mandates that the Architectural and Transportation Barriers Compliance Board ("Access Board") play an active role in making sure that public accommodations are "accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities." 42 U.S.C. § 12204. In furtherance of this mandate, the Access Board is required to issue minimum guidelines and requirements for accessibility, which federal agencies are then required to incorporate into any final enforcement regulations issued pursuant to section 306 of the ADA. *See* 42 U.S.C. § 12186(c).

In August 1998, the Access Board created the Passenger Vessel Access Advisory Committee ("PVAAC") to provide recommendations for a proposed rule addressing accessibility guidelines for newly constructed and altered passenger vessels and cruise ships covered by the ADA. The PVAAC was composed of twenty-one members representing various groups, including owners and operators of passenger vessels and cruise lines, designers of passenger vessels, and organizations representing individuals with disabilities.[6] The

[6] The Committee's membership included American Classic Voyages, American Council of the Blind, American Sail Training Association, American Society of Travel Agents, BB Riverboats, Boston Commission for Persons with Disabilities, Chesapeake Region Accessible Boating, International Council of Cruise Lines, National Tour Association, Paralyzed Veterans of America, Passenger Vessel Association, Port of San Francisco, Princess Cruises,

PVAAC explored various ways in which to achieve access in light of competing considerations, and it made recommendations (in the form of a Final Report) that the Access Board will use in proposing guidelines. *See* Summary of the Report from the Passenger Vessel Access Advisory Committee, *available at* http://www.access-board.gov/pvaac/commrept/report-summary.htm (last visited June 28, 2004).

Amicus PVA representatives were active members of the PVAAC and worked collaboratively with other Committee members (including industry representatives) to provide recommendations to the Access Board regarding how newly constructed and altered passenger vessels would comply with the ADA. In developing its Final Report, the PVAAC applied the existing ADA Accessibility Guidelines for Buildings and Facilities to passenger vessels and then modified certain "building" provisions which the Committee determined would be problematic if applied to seagoing vessels.[7] Vessel owners and operators understood that the applicability of the

Rhode Island Tourism Division, Self Help for Hard of Hearing People, Society for the Advancement of Travel for the Handicapped, Society of Naval Architects and Marine Engineers, Southeast Alaska Independent Living, Southwest Disability and Business Technical Assistance Center, Transportation Institute, and the Washington State Department of Transportation. *See Passenger Vessel Access Advisory Committee Members*, *available at* http://www.access-board.gov/pvaac/CommList.htm.

[7] The Final Report is available online at http://www.access-board.gov/pvaac/commrept/index.htm. While PVAAC issued its Final Report over three years ago, the Access Board has yet to issue formal guidelines based on the Final Report, and the Department of Justice and Department of Transportation have yet to promulgate any regulations based on the Report. *See Spector v. Norwegian Cruise Line Ltd.*, 356 F.3d 641, 650 n.10 (5th Cir. 2004) ("Amazingly, now more than a decade since the ADA's passage, DOJ and DOT have yet to issue new construction and alteration regulations specific to cruise ships.").

ADA would require at least some degree of accessibility onboard passenger vessels, as well as embarking and disembarking. The Final Report provided a sound basis for workable and appropriate standards for the cruise ship industry to implement the public accommodations provisions of the ADA.

B. Making Cruise Ships Fully Accessible to People with Disabilities Makes Good Business Sense.

In 2003, the Travel Industry Association of America, the Open Door Organization, and the Society for Accessible Travel and Hospitality released the results of a Harris Interactive Survey that examined the vacation habits of people with disabilities. The Survey found that 12 percent of the disabled population had taken a vacation cruise in the preceding five years, compared to 8 percent of the population at large.[8] The Harris Survey also found that people with disabilities spend over $13 billion each year on vacations, and that this market will only expand in the future.[9] According to the Travel Industry Association, aging baby-boomers will drive the total disabled population up to 24 percent of the U.S. population by the year 2030.[10]

Many cruise lines have recognized the market potential of people with disabilities, and have actively sought them out. Carnival Cruise Lines, for example, has produced a brochure for people with disabilities entitled "Easy Access to Fun" specifically aimed at the traveler with a disability, and

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[8] *See* Deborah Alexander, *Vacationing with Disabilities: New Travel Market Is Opening Up on the Road*, OMAHA WORLD-HERALD, May 23, 2003, at 1D; *see also A League of Their Own*, EXCEPTIONAL PARENT, Vol. 34, No. 5, May 1, 2004, at 42.

[9] *See* Alexander, *supra* note 8.

[10] *See* Tricia Holly, *Able Bodies, Open Minds: Learning to Serve the Disabled Travel Market Is Daunting but Well Worth the Effort of Travel Agents*, TRAVEL AGENT, Vol. 311, No. 2, Jan. 13, 2003, at 20.

the cruise line has experienced remarkable growth in that segment of the market.[11] When the Royal Caribbean cruise line launched its newest ship *Mariner of the Seas* in 2003, the line chose Jean Driscoll, an Olympic wheelchair champion and advocate for people with disabilities, to be the ship's "Godmother" in order to highlight the ship's accessibility. At the *Mariner*'s official launch, Driscoll christened the ship, pushing a remote-control button to release a bottle of champagne against the hull.[12]

Despite these efforts by some cruise lines to tap into the market of people with disabilities, many cruise lines have failed to make their ships fully accessible, as the instant litigation attests. While most cruise lines have in place some sort of policies or procedures regarding passengers with disabilities, these policies and procedures normally do not create any judicially enforceable rights. Many people with disabilities still face access challenges aboard cruise ships, and several suits under the ADA have been brought against the cruise lines over the past few years to try to make cruise ships more accessible. *See* Curtis D. Edmonds, *Won't You Let Me Take You on a Sea Cruise: The Americans With Disabilities Act and Cruise Ships*, 28 TUL. MAR. L.J. 271 (2004) (summarizing cases and describing policies of different cruise lines).[13]

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[11] *See id.* (noting that "the number of disabled passengers shot up 36 percent between 2000 and 2001" and "predict[ing] an even larger increase in 2002").

[12] Victoria Stevens, *Royal Treatment: Royal Caribbean Line Launches Its Newest Luxury Ship, the Mariner of the Seas*, TORONTO STAR, Nov. 27, 2003, at H01.

[13] The district and circuit courts that have considered the issue have come to varying conclusions regarding the applicability of Title III of the ADA to cruise ships. As Petitioners explain on pages 12-15 of their petition, the only two circuits to have addressed the question have come to opposite conclusions, and those two circuits account for almost two-thirds of all the cruise ship ac-

Since the PVAAC has determined that it is feasible for cruise ships to become reasonably accessible to persons with disabilities, and since many cruise lines find the market of people with disabilities a profitable one, there is no reason to exempt cruise ships from the requirements of Title III of the ADA.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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tivity in the country. This Court should therefore take this opportunity to settle the law in this area.